

**A RESOLUTION AUTHORIZING AN AGREEMENT WITH BJ'S WHOLESALE CLUB
TO IMPLEMENT THE REQUIREMENTS OF A RESOLUTION OF THE
TOWNSHIP OF THE NORTH BRUNSWICK PLANNING BOARD, DATED
MARCH 12, 2013 APPROVING THE AMENDED PRELIMINARY AND FINAL SITE
PLAN FOR BLOCK 4.46, LOTS 1.01, 1.02 & 1.04**

WHEREAS, by Resolution dated July 19, 2011, the Township Planning Board granted Amended Preliminary & Final Site Plan Approval to Commerce Center NB, LLC and Commerce Center NB1, LLC (collectively the "Developer") for the construction of among other things, a 113,700 square foot BJ's Wholesale Club, Inc. ("BJ's") with a mezzanine containing an additional 2,500 square feet (the "Project") on a portion of Lot 1.04 (the "2011 Resolution"); and

WHEREAS, the Project is located in the Transitional Mixed Use Zone ("TMU Zone") as described in Section 205-79 of the Ordinances of the Township of North Brunswick (the "Township Code"); and

WHEREAS, the 2011 Resolution concludes that the Project is permitted in the TMU Zone as a Large Retail Establishment pursuant to Section 205-79.2A(10) of the Township Code; and

WHEREAS, Large Retail Establishments located in the TMU Zone are required pursuant to Section 205-79.4D(3) of the Township Code to utilize renewable energy, such as, but not limited to, solar, wind, fuel cells or geothermal power to produce a minimum of 10% of its estimated energy demand; and

WHEREAS, the Developer intends to utilize solar photovoltaic technology located on the roof of the Project to satisfy its obligation with respect to Section 205-79.4D(3) of the Township Code; specifically BJ's intends to install approximately a 400 kW solar photovoltaic system which will meet the needs of approximately 15% of the Project's total energy requirements; and

WHEREAS, although the Developer has completed construction of the Project, neither the Developer nor BJ's has initiated installation of the Solar Project; and

WHEREAS, the Developer has provided the Township with a report dated February 27, 2013, prepared by Tioga Energy, Inc., a solar installation and financing firm retained by the Developer (the "Tioga Report"), which explains that the current state of the solar market in New Jersey, including the State-based incentive known as a the Solar Renewable Energy Certificate ("SREC") market, renders the Solar Project financially infeasible at this time; and

WHEREAS, the Developer is ready to open the Project to the public; and

WHEREAS, based upon the volatile state of the solar market in New Jersey generally, and the conclusions reached in the Tioga Report specifically, the Developer has requested an amendment of the Resolution that would grant the Developer a waiver for an extension of time to comply with its obligations with respect to Section 205-79.4D(3) of the Township Code; and

WHEREAS, the Township has reviewed the Tioga Report and is aware of the current oversupply conditions in the New Jersey SREC market; and

WHEREAS, the Township desires to uphold the sustainability requirements of the TMU Zone portion of the Township Code while also providing the Developer with the ability to develop and implement an economically viable solar renewable energy project; and

WHEREAS, the Township and Developer desire to enter into an Agreement to set forth their respective undertakings, rights and obligations, all in accordance with applicable law and the terms and conditions of this Agreement hereinafter set forth; and